

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

MARIA AVILA)
Plaintiff,) Case No. 14-C-2296
v.)
RAND OIL, INC, ALPESH PATEL and) Judge Robert M. Dow, Jr.
DAXESH PATEL) Magistrate Judge Young B. Kim
Defendants.)

**PLAINTIFF'S MOTION FOR A DEFAULT JUDGMENT AGAINST
DEFENDANTS RAND OIL, INC. AND ALPESH PATEL, ENTRY OF A
FINAL JUDGMENT ORDER, AND LEAVE TO FILE HER
PETITION FOR ATTORNEY'S FEES AND COSTS**

Plaintiff Maria Avila respectfully moves pursuant to Federal Rules of Civil Procedure 54(b) and (d), 55(b)(2), and 58(b) for a default judgment against Defendants Rand Oil, Inc. and Alpesh Patel, entry of a final judgment order as to all Defendants, and leave to file her petition for attorney's fees and costs. In support of her Motion, Plaintiff is filing the Declaration of Maria Avila, with business records and other evidence attached as exhibits; and the Declaration of Marni Willenson, with Plaintiff's damages calculations. In support of her Motion, Plaintiff also states:

1. On March 31, 2014, Plaintiff filed her Complaint against Defendants Rand Oil, Inc. and Alpesh Patel asserting wage theft and retaliation claims under the Fair Labor Standards Act, Illinois Minimum Wage Law, and Illinois Wage Payment and Collection Act. ECF No. 1. Defendants filed an appearance through counsel, ECF No. 6, and answered the Complaint. ECF No. 9.

3. In February 2015, Defendants requested that their depositions be canceled so the parties could explore settlement. ECF No. 20. However, before the settlement conference, defense counsel Bryan Butcher informed the magistrate judge that a settlement conference would be futile. ECF No. 32. Shortly thereafter, this Court granted Mr. Butcher leave to withdraw. ECF No. 38.

4. Defendant Rand Oil, Inc. was thereafter unrepresented by counsel. The Court issued multiple warnings that a corporation must appear in federal court through counsel and directed Rand Oil to secure licensed counsel. ECF Nos. 40, 45. It also ordered Alpesh Patel to appear at status hearings and to either secure counsel or file a pro se appearance. *Id.*

5. On July 13, 2015, Plaintiff amended her complaint to add Daxesh Patel as a Defendant. ECF No. 41.

6. Contrary to orders entered on June 30, 2015 and August 24, 2015, Defendants Rand Oil, Inc. and Alpesh Patel did not appear in court or file written appearances. Defendants also failed to answer the Amended Complaint.

7. On November 2, 2015, the Court entered an order of default as to Defendants Rand Oil, Inc. and Alpesh Patel.

8. On November 12, 2015, the Court entered an agreed judgment order against Defendant Daxesh Patel in the amount of \$5,500 and dismissed the claims against him without prejudice, to convert to prejudice on January 31, 2017.

9. Plaintiff has filed, along with this Motion, the following evidence establishing the amount of her damages caused by Defendants' violations of the

Fair Labor Standards Act, Illinois Minimum Wage Law, and Illinois Wage Payment and Collection Act: 1) Plaintiff's written testimony, signed under oath (Exhibit 1 to this Motion); 2) Defendants' business records, created and authenticated by Plaintiff, evidencing her hours worked and wages paid (Exhibit A to Plaintiff's Declaration); 3) Plaintiff's pay stubs and W-2 Forms reflecting her mitigation earnings (Exhibit B to Plaintiff's Declaration); 4) the declaration of the undersigned counsel (Exhibit 2 to this Motion), describing in detail the calculation of Plaintiff's wage theft and retaliation damages; 5) a Microsoft Excel spreadsheet, printed to PDF, with the wage theft damage calculations (Exhibit A to counsel's declaration); and 6) an Excel spreadsheet, also printed to PDF, with the retaliation damage calculations (Exhibit B to counsel's declaration).

10. Based upon the evidence submitted by Plaintiff, the Court should enter a default judgment against Defendants Rand Oil, Inc. and Alpesh Patel in the amount of \$122,635.66.

11. Upon entry of the default judgment against Rand Oil and Alpesh Patel, the Court will have resolved all claims and issues in the case. Thus, the Court should also enter a final judgment order. Fed. R. Civ. P. 54.

12. Finally, the Court should grant Plaintiff leave to file her petition for attorney's fees and costs under the Fair Labor Standards Act, 29 U.S.C. § 216(b); Illinois Minimum Wage Law, 820 ILCS 105/12(a); and Illinois Wage Payment and Collection Act. 820 ILCS 115/14(a). The application of Local Rule 54.3(d) in this circumstance, providing for an exchange of information and attempts to reach

agreement on the amount of fees and costs, would be an exercise in futility. The only Defendant with an appearance on file is Daxesh Patel, and Plaintiff is not seeking an award of fees and costs from Defendant Daxesh Patel. Defendants Alpesh Patel and Rand Oil have not appeared and have been defaulted. Plaintiff's counsel cannot "confer and attempt in good faith to agree on the amount of fees or related nontaxable expenses that should be awarded prior to filing a fee motion," L.R. 54.3(d), with these parties in default. Therefore, Plaintiff should be granted to leave to file her fee and cost petition without Local Rule 54.3(d) procedures.

13. Plaintiff is noticing this Motion to be heard a full twelve (12) days after filing, on Tuesday, January 26, 2016, and will serve copies of the Motion and all exhibits on Alpesh Patel and Rand Oil by certified mail to Alpesh Patel's last-known address.

Dated January 14, 2016

Respectfully submitted,

/s Marni Willenson
Willenson Law, LLC
542 S. Dearborn St., Suite 610
Chicago, IL 60605
(312) 546-4910 Tel.
(312) 261-9977 Fax
marni@willensonlaw.com

Attorney for Plaintiff

CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that, on January 14, 2016, she served a true and correct copy of the foregoing document with all exhibits on Defendant Daxesh Patel through the Court's ECF/CM System and on Defendant Alpesh Patel and Rand Oil, Inc. via certified mail to 799 Daybreak Lane, Carol Stream, IL 60188.

/s/ Marni Willenson